

# Ordinance



City Council  
City of Wilmington  
North Carolina

**Introduced By:** Thomas C. Pollard, City Attorney

**Date:** 06/05/2007

## **Ordinance Establishing a Moratorium on the Release of Projects in the City of Wilmington for Building Permit Approval**

### **LEGISLATIVE INTENT/PURPOSE:**

From July 2005 through February 2006, the City of Wilmington experienced three sanitary sewer overflows from the Northeast Interceptor Sewer Force Main ("NEI") resulting in the discharge of approximately 3.8 million gallons of untreated wastewater into Hewletts Creek.

In furtherance of its responsibility to protect human health and the environment, the North Carolina Department of Environment and Natural Resources ("DENR") issued a notification of sewer moratorium on April 12, 2006 based on its determination that the Northeast Interceptor is unable to reliably and safely collect and transmit waste to the Southside Wastewater Treatment Plant.

DENR further determined that portions of the NEI were in imminent danger of failure and placed a sewer moratorium on the discharge of additional wastewater through the issuance of permits for the extension of sewers tributary to the Northeast Interceptor effective May 27, 2006 ("sewer extension moratorium"). The purpose of the sewer extension moratorium was to limit the probability of sewer failure and the magnitude of resulting discharges by controlling the introduction of wastewater to the NEI and the City, County and Wrightsville Beach were requested to take all reasonable effective actions to limit the additional flow of wastewater into the NEI.

On November 19, 2006, the City experienced another overflow of .65 million gallons of untreated wastewater into Hewletts Creek from the Northeast Interceptor.

The City has undertaken engineering studies and is entering into construction contracts for the improvement of the Northeast Interceptor in order to address concerns about its reliability. The City has also undertaken an evaluation of its entire sewer system and completed a Management, Operation and Maintenance ("MOM") study of the sewer system. The City is in the process of implementing projects and recommendations identified in both the NEI, the City-wide sewer system assessment and the MOM study. The City is taking all reasonable action to address the NEI deficiencies, but construction will not be completed on the NEI improvement projects necessary for the lifting of the sewer extension moratorium until the end of 2007.

By Resolution adopted on April 3, 2007, the Wilmington City Council authorized the City

Manager to negotiate the terms of a Special Order on Consent ("SOC") with DENR to address the plans for improvement of the Northeast Interceptor and the flows in the Northeast Interceptor.

By letter dated May 8, 2007, DENR determined that flows in the Northeast Interceptor had increased above the operating levels prior to the effective date of the sewer extension moratorium. Based on the continuing increases in flows and questions remaining about the reliability of the NEI, the City, County and the Town of Wrightsville Beach were directed to stop issuing building permits that would be tributary to the NEI ("building permit moratorium"). The City, County and Wrightsville Beach have continued to meet with DENR to address the issues of the capacity of the NEI. The estimated increase in flow is approximately 480,000 gallons per day ("gpd"). As part of the negotiations on the Special Order of Consent, the City and County have proposed managing flows between the City's Northside and Southside Wastewater Treatment Plants to permit diversion of up to 600,000 gallons per day from the NEI to the Northside Wastewater Treatment Plant ("NSWWTP") to relieve the NEI. This will allow up to 120,000 gallons per day to service new connections to be added in the service area tributary to the NEI and allow up to 120,000 gallons per day to service new connections (50% allocated to the City; 50% allocated to County) to be added to the service area tributary to the Northside Wastewater Treatment Plant. The NSWWTP is nearing capacity, but the construction of an expansion to the NSWWTP is scheduled for completion in the first quarter of 2009. The flow management procedures are more specifically outlined in Exhibit A attached hereto and incorporated herein by reference.

The limitations on the issuance of building permits for such service connections for the NEI would remain in effect until the sewer extension moratorium is rescinded. The limitation on building permits for the NSWWTP will remain in effect until the moratorium is lifted or the capacity of the NSWWTP is increased. Based on the proposed flow management procedures to be set forth in an SOC, DENR lifted the building permit moratorium on May 23, 2007.

The City Council has determined that the failure to manage flow into the Northeast Interceptor and the Northside Plant will result in an imminent and substantial threat to the public health and it is necessary to limit the release of development projects in the City for building permit approval by New Hanover County. It is further necessary to limit the release of projects for building permits to ensure compliance with the terms of the proposed SOC.

The City is authorized by GS 160A-381 to adopt a development moratorium without notice when there is an imminent and substantial threat to the public health or safety.

The City is further authorized by GS 160A-312 to adopt adequate and reasonable rules to protect its sewer system.

**THEREFORE, BE IT ORDAINED:**

**SECTION 1: Moratorium on development approvals.**

(a) Upon the issuance of building permits in the City of Wilmington and New Hanover County equivalent to 120,000 gpd of sewer service tributary to the NEI, the City of Wilmington shall not approve any development projects requiring sewer service in such service area for the

issuance of building permits by New Hanover County.

(b) Upon the issuance of building permits in the City of Wilmington equivalent to 60,000 gpd of sewer service tributary to the Northside Waste Water Treatment Plant, the City of Wilmington shall not approve any development projects requiring sewer service tributary to the NSWWTP for the issuance of building permits by New Hanover County. Effective immediately, the City of Wilmington shall not release any development projects for the issuance of permits for the extension of sewers tributary to the NSWWTP.

(c) For the purpose of this ordinance, the commencement date for the calculations of permitted sewer service amounts shall be May 23, 2007. The permitted sewer service amounts may be increased or reduced based on modifications to permitted sewer flows required or approved by DENR. Fifty (50) percent of the permitted sewer service amounts tributary to the NEI and the NSWWTP shall be allocated to residential projects and fifty (50) percent of such sewer service amounts shall be allocated to commercial projects. A contractor may apply for and hold a maximum of ten (10) permits for ten (10) residential units in any given project at any given time. A contractor may not apply for additional permits until certificates of occupancy are issued for existing permitted units.

(d) For the purposes of this ordinance, the approval of a development project shall include any zoning approval, the approval of projects for building permits under Section 18-50 of the Land Development Code and the approval of site plans for major and/or minor developments under Section 18-60 of the Land Development Code.

(e) Public good projects as identified by the City Council shall be exempted from this ordinance.

SECTION 2: This ordinance is transitory in nature and shall not be codified.

SECTION 3: All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 4: If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 5: This ordinance shall be effective immediately upon its adoption and shall expire on December 31, 2007.

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Bill Saffo, Mayor

Adopted at a \_\_\_\_\_ meeting

on \_\_\_\_\_, .

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

